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20 Arthrex, Inc.

21 **UNITED STATES DISTRICT COURT**
22 **SOUTHERN DISTRICT OF CALIFORNIA**

23 KFX MEDICAL CORP.

24 Plaintiff and
25 Counterdefendant,

26 vs.

27 ARTHREX, INC.

28 Defendant and
Counterclaimant.

Case No. 3:11-cv-1698

Hon. Dana M. Sabraw

**DECLARATION OF CHARLES W.
SABER IN SUPPORT OF
DEFENDANT ARTHREX, INC.'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT OF NO INEQUITABLE
CONDUCT IN CONNECTION WITH
U.S. PATENT NOS. 8,100,942 &
8,109,969**

1 I, Charles W. Saber, declare and state as follows:

2 1. I am a partner in the law firm of Dickstein Shapiro LLP, and I am
3 counsel of record for Arthrex, Inc. (“Arthrex”) in this action. I submit this Declaration
4 in Support of Defendant Arthrex’s Opposition to Plaintiff’s Motion for Summary
5 Judgment of No Inequitable Conduct In Connection With U.S. Patent Nos. 8,100,942
6 & 8,109,969.
7

8 2. The following statements are based on my personal knowledge.
9

10 3. Attached hereto as Exhibit 1 is a true and correct copy of the statement of
11 Tate Scott for United States Patent Reexamination No. 90/011430, dated April 12,
12 2011.
13

14 4. Attached hereto as Exhibit 2 is a true and correct copy of an article by
15 Peter J. Millett, Augustus Mazzocca & Carlos A. Guanche. “Mattress Double anchor
16 Footprint Repair: A Novel, Arthroscopic Rotator Cuff Repair Technique.”
17 *Arthroscopy: The Journal of Arthroscopic and Related Surgery*, Vol. 20, No.8,
18 October 2004: 875-79 (Defendant’s Deposition Exhibit, “DDX” 071).
19
20

21 5. Attached hereto as Exhibit 3 is a true and correct copy of U.S. Patent No.
22 5,891,168, dated April 6, 1999 (DDX 104).
23

24 6. Attached hereto as Exhibit 4 is a true and correct copy of U.S. Patent No.
25 5,634,926, dated June 3, 1997 (DDX 106).
26

27 7. Attached hereto as Exhibit 5 is a true and correct copy of U.S. Patent No.
28 8,100,942, dated January 24, 2012 (DDX 010).

1 8. Attached hereto as Exhibit 6 is a true and correct copy of excerpts of the
2 expert invalidity report of Jonathan E. Greenleaf, M.D., dated February 21, 2013.

3 9. Attached hereto as Exhibit 7 is a true and correct copy of excerpts of the
4 rebuttal expert report of Jonathan B. Ticker, M.D., dated April 1, 2013 (DDX 161),
5
6 FILED UNDER SEAL.

7 10. Attached hereto as Exhibit 8 is a true and correct copy of the Declaration
8 of Tate Scott in Support of KFx' s Motion for Summary Judgment of No Inequitable
9 Conduct in Connection with U.S. Patent No. 7,585,311, dated July 11, 2012.
10

11 11. Attached hereto as Exhibit 9 is a true and correct copy of the Related
12 Applications excerpt from the Application for United States Patent Application No.
13 11/143,007, dated June 1, 2005.
14

15 12. Attached hereto as Exhibit 10 is a true and correct copy of an Office
16 Action for United States Patent Application No. 11/143,007, dated December 23,
17 2008.
18

19 13. Attached hereto as Exhibit 11 is a true and correct copy of an Office
20 Action for United States Patent Application No. 11/143,007, dated April 30, 2009.
21

22 14. Attached hereto as Exhibit 12 is a true and correct copy of an
23 Amendment for United States Patent Application No. 11/143,007, dated May 8, 2009.
24

25 15. Attached hereto as Exhibit 13 is a true and correct copy of the Notice of
26 Allowability for United States Patent Application No. 11/143,007, dated June 17,
27 2009.
28

1 16. Attached hereto as Exhibit 14 is a true and correct copy of the Petition to
2 have an Information Disclosure Statement considered for United States Patent
3 Reexamination No. 90/011430, dated April 28, 2011.
4

5 17. Attached hereto as Exhibit 15 is a true and correct copy of the Decision
6 to have an Information Disclosure Statement considered for United States Patent
7 Reexamination No. 90/011430, dated July 15, 2011.
8

9 18. Attached hereto as Exhibit 16 is a true and correct copy of an Information
10 Disclosure Statement for United States Patent Application No. 13/245620, dated
11 December 1, 2011.
12

13 19. Attached hereto as Exhibit 17 is a true and correct copy of an Information
14 Disclosure Statement for United States Patent Application No. 13/245622, dated
15 December 1, 2011.
16

17 20. Attached hereto as Exhibit 18 is a true and correct copy of excerpts of the
18 deposition transcript of Ryan E. Melnick, Ph.D., dated December 4, 2012, FILED
19 UNDER SEAL.
20

21 21. Attached hereto as Exhibit 19 is a true and correct copy of a Request for
22 First Action Interview for United States Patent Application No. 13/245620.
23

24 22. Attached hereto as Exhibit 20 is a true and correct copy of a Request for
25 First Action Interview for United States Patent Application No. 13/245622.
26
27
28

1 23. Attached hereto as Exhibit 21 is a true and correct copy of the Applicant-
2 Initiated Interview Summary for United States Patent Application No. 13/245620,
3 dated December 2, 2011.
4

5 24. Attached hereto as Exhibit 22 is a true and correct copy of the Applicant-
6 Initiated Interview Summary for United States Patent Application No. 13/245622,
7 dated December 2, 2011.
8

9 25. Attached hereto as Exhibit 23 is a true and correct copy of the Notice of
10 Allowability for United States Patent Application No. 13/245620, dated December 2,
11 2011.
12

13 26. Attached hereto as Exhibit 24 is a true and correct copy of the Notice of
14 Allowability for United States Patent Application No. 13/245622, dated December 2,
15 2011.
16

17 27. Attached hereto as Exhibit 25 is a true and correct copy of U.S. Patent
18 No. 8,109,969, dated February 7, 2012 (DDX 011).
19

20 28. Attached hereto as Exhibit 26 is a true and correct copy of the
21 Application Data Sheet for United States Patent Application No. 13/245622, dated
22 September 26, 2011.
23

24 29. Attached hereto as Exhibit 27 is a true and correct copy of KFx's
25 Preliminary Infringement Contentions as to Newly Asserted Patent Nos. 8,100,942
26 and 8,109,969, dated April 9, 2012.
27
28

1 30. Attached hereto as Exhibit 28 is a true and correct copy of the Order
2 Granting in Part and Denying in Part Plaintiff's Motion to Dismiss Defendant's
3 Counterclaim, dated August 15, 2012 (ECF No. 49).
4

5 31. Attached hereto as Exhibit 29 is a true and correct copy of Arthrex's
6 Objections and Responses to KFx's Third Set of Interrogatories (No. 7), dated June 4,
7 2012.
8

9 32. Attached hereto as Exhibit 30 is a true and correct copy of U.S. Patent
10 Application Publication No. 2006/0079904, dated April 13, 2006 and U.S. Provisional
11 Application No. 60/617640, dated October 13, 2004.
12

13 Dated: June 14, 2013

By: /s/Charles W. Saber

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